

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MFB FERTILITY INC.,

Plaintiff,

v.

ACTION CARE MOBILE VETERINARY
CLINIC, LLC,

Defendant.

Case No. 1:23-cv-03854

Judge Harry D. Leinenweber
Magistrate-Judge Gabriel A. Fuentes

**PLAINTIFF, MFB FERTILITY INC.'S REPLY TO THE MOTION FOR LEAVE TO
AMEND THE COMPLAINT**

Plaintiff MFB Fertility Inc. ("MFB") respectfully submits this reply for leave to the amend the complaint ("Motion to Amend") (Doc. 22) and responds as follows:

1. Action Care Mobile Veterinary Clinic, LLC ("Action Care") filed a response to the Motion to Amend stating that it "is willing to forgo opposing the Motion to Amend." (Doc.24). As such, Action Care agrees that the Court should grant the Motion to Amend.

2. MFB respectfully requests that the Court issue an order granting MFB's Motion to Amend allowing MFB to file the Amended Complaint within five (5) days of the entry of the order.

3. Upon filing of the Amended Complaint, the Amended Complaint becomes the operative pleading in the case, thus moots Action Care's motion to dismiss Plaintiff's copyright claim. (Doc. 10). "It is axiomatic that an amended complaint supersedes an original complaint and renders the original complaint void." *Trading Techs. Int'l, Inc. v. BGC Partners, Inc.*, 2010 U.S. Dist. LEXIS 84138, *3 (N.D. Ill. Aug. 17, 2010) ("When an amended complaint is filed, the prior pleading is withdrawn, and the amended pleading is controlling.").

4. MFB respectfully requests that the Court dismiss Action Care's motion to dismiss the original copyright claim as being moot. (Doc. 10).

5. Action Care stated that it intends to file a motion to dismiss the Amended Complaint and a motion for attorneys' fees in relation to both the Amended Complaint and the originally filed Complaint. (Doc. 24, p. 1).

6. MFB respectfully requests that the Court set a briefing schedule for the proposed motion to dismiss and for attorneys' fees wherein Action Care's motion and memorandum in support of its motion to dismiss and for attorneys' fees are due twenty-one (21) days after MFB files the Amended Complaint, the opposition brief is due twenty-one (21) days later (accounting for the holidays) and the reply is due fourteen days after the opposition brief is filed.

7. Action Care requested that the Court grant it leave to file a memorandum of up to 30 pages in support of Action Care's contemplated combined motion to dismiss and motion for attorneys' fees. MFB leaves it to the Court's discretion on whether leave to extend the page limit should be granted.

8. Action Care further notes that Action Care filed an Answer, Affirmative Defenses, and Counterclaims. (Doc. 15). MFB shall file its answer to the counterclaims, or otherwise plead, by December 18, 2023.

Dated: November 29, 2023

Respectfully submitted,

/s/ Dean D. Niro

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